IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6463 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANABHAI S CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6463 of 2003

MR KR JANI for Petitioner No. 1

MR SATISH R PATEL for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

MR RC KODEKAR, AGP for Respondent No. 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2003

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 24-3-2003 passed by the District Magistrate, Kheda at Nadiad, in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. I have heard learned advocate for the respective parties. I have also perused the material on record.

3. Learned advocate for the petitioner has mainly concentrated his arguments on the delay in deciding the representation. According to him, the detenu has submitted a representation to the Hon'ble Chief Minister on 7-4-2003, same was despatched from the said office on 21-4-2003 to the Civil Supplies Department and it reached there on 26-5-2003. It is contended that there is no explanation for the delay for the period from 21-4-2003 to 26-5-2003 in forwarding the representation and hence, it is prayed that order of detention be quashed and set aside. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, the representation dated 7-4-2003 sent to the office of Chief Minister was despatched from the said office on 21-4-203 to the office of Civil Supplies Department and it reached there only on

26-5-2003 i.e. after a period of one month and five days. There is no satisfactory explanation putforward by the authorities for the said delay though affidavit has been filed on behalf of respondent No.4. Said affidavit is ordered to be taken on record. However, no affidavit is filed on behalf of the respondent No.1.

5. Since no affidavit has been filed on behalf of the respondent No.1 and also since no explanation has been putforth by the concerned authorities for the delay in forwarding the representation and deciding the representation in time, the order of detention is illegal and the same cannot be sustained. In view of the fact that a co-accused has been released by this Court while passing order dated 1-8-2003 in Special Civil Application No.6462 of 2003, the present petitioner is entitled to be released on parity.

6. The petition is allowed. The impugned order of detention dated 24-3-2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
radhan/